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REPORTS

NOTES OF THE WEEK

Railway Prosecutions

A solicitor prosecuting on behalf of British Railways in a case of fraudulent travelling is reported as telling the magistrates that every such prosecution cost £10 and took six weeks, whereupon the chairman said it was not surprising that British Railways lost millions of pounds.

It certainly does seem a great deal of money to expend on a case which is usually short and simple, but one has to remember the change in the value of money. Even so, the question remains why such a case should take six weeks to prepare. There are reports to be submitted, no doubt, but unless these pass through many hands and are delayed there seems no obvious reason why so much time should elapse before the case is ready. The taxpayer is constantly asking whether there is more red tape and unnecessary minuting of papers in the nationalized undertakings than there was before they were nationalized. If staff is larger than is necessary, or if it is not economically employed, costs will inevitably rise. Legal costs are no doubt a comparatively small item in the total expense of running the railways, but they are not insignificant. We are, however, thinking of that six weeks of preparation rather than of the fees paid to solicitors and counsel.

The other side of the question is whether those defendants who are convicted are ordered to pay the costs. In some cases, no doubt, they would not be able to do so, and no order other than a small sum in payment of part of the costs would be made. In many, however, the defendant could well pay the whole amount if granted a reasonable time, and thus British Railways would be relieved. Time was when a number of those convicted of travelling without paying were finding it hard to make both ends meet. Today, few can plead inability to pay. It is only another example of the desire to get something for nothing.

The maximum penalty used to be only 40*s.* That was raised in 1950 to £5, but it is certainly not excessive, and there is no reason why defendants with the means to pay should not also pay costs.

No Smoking

The manager of a grocer's shop has been fined at Acton magistrates' court for smoking his pipe while standing at the bacon slicer near uncovered bacon and cheese.

The offence is against reg. 9 of the new Food Hygiene Regulations, the heading of which is "Personal Cleanliness." The regulation requires a person engaged in handling food to keep himself, and his clothing clean; cover up any cut or abrasion on any exposed part, refrain from spitting and "refrain from the use of tobacco (including snuff) while he is handling any open food or is in any food room in which there is open food." It is not difficult to see why smoking and snuff-taking should be prohibited, in the interests of health. In the case at Acton the defendant was said to have repeated the offence some two or three weeks after the first offence had been pointed out to him and he was fined a total of £6. The habit of smoking at work has become common in various occupations and in some it is difficult to check, especially when there is no obvious harm in it. Among persons who are handling uncovered food it may be hoped that the practice will be discontinued now that the Food Hygiene Regulations have definitely prohibited it.

Hearings *in Camera*

Publicity in the administration of justice is regarded as an important safeguard and good reasons must be found to justify departure from the general practice. Magistrates are compelled to sit *in camera* when hearing applications under the Adoption Act, and we have never heard the wisdom of this challenged. Under the Guardianship of Infants Acts the proceedings are always domestic proceedings by virtue of s. 56 of the Magistrates' Courts Act, so that the general public cannot claim admission to the court as of right. Magistrates can, however, acting under r. 4 (4) of the Guardianship of Infants (Summary Jurisdiction) Rules, 1925, hear an application *in camera* if it considers it expedient in the interests of the infant. It has sometimes been said that magistrates make too little use of this power, but in our opinion they should not hear a case *in camera*

without considering seriously whether this is really necessary.

We note that Vaisey, J., recently emphasized the desirability of a public hearing as a general rule. The case before him was not a matter of guardianship, but was brought under the Inheritance (Family Provision) Act, 1938. It did, however, concern certain infants. The learned Judge is reported as saying that he very much objected to having justice done behind closed doors. After hearing counsel he said that if he were told there were sufficient reasons he would hear the case *in camera*, but that if it appeared that no harm could possibly happen to the infants by the matter being heard in open court, he would certainly reopen it and give judgment in open court.

A Tragic Chapter of Accidents

One hears not infrequently of cases of persons apparently in good health, and certainly not advanced in years, being suddenly stricken with a crippling illness which deprives them, without any real warning, of control over their actions. This being so it is perhaps fortunate that there are not more incidents on the roads similar to that which led to a motorist being charged, at Somerset Assizes, with manslaughter. He was found Not Guilty, and the prosecution decided to offer no evidence on an alternative charge of dangerous driving, a decision which is almost to be expected in view of the provision in s. 34 of the Road Traffic Act, 1934, by which the jury, had they thought it proper to do so, could have found the defendant guilty of the lesser charge when they were dealing with that of manslaughter.

The defendant was aged 43. The manslaughter charge arose from the death of a cyclist who was run into by the defendant's car. Following this the car proceeded to hit another cyclist, then it went diagonally across the road and hit a car, and then went back to its proper side and hit another car. Thereafter yet another car was run into and after that the defendant's car crashed into a petrol lorry, hit yet one more car and a motor cycle combination. The defendant's evidence was that he had no recollection of any of these incidents and that, having subsequently been examined by a specialist, he had learned that apparently he was subject to epilepsy. He had decided never to drive a car again, an obviously wise decision.

Reading this story one regrets the tragic death of the first cyclist, but it is easy to realize that it was just a matter of chance that this car, careering along apparently out of control, did not kill several persons, but just one. When a would-be driver applies for a licence he has to answer various questions about his health so far as it is likely to affect his ability safely to drive a car. But this provides no safeguard to cover the case of sudden illness, such as a thrombosis, which may give no adequate warning of its onset. Only recently we read of a bus driver who, mercifully, realized in time that he was ill and stopped his bus and then died before he reached hospital. With our congested roads and the high speeds of modern cars the dangers inherent in this sort of happening do not bear thinking about, for it seems quite impossible to guard against them.

Insanitary Food Premises

Food hygiene is receiving considerable attention today, and there is plenty of evidence that recent legislation was much needed. There has undoubtedly been considerable improvement since so many articles of food have been generally prepacked and often untouched by hand, but some articles of food are still exposed to the risk of contamination, and some premises reveal a deplorable state of things. In a recent case at Ipswich magistrates' court, when a master baker was fined on summonses relating to conditions of his bakehouse, it was stated that there were two infestations of ants and cockroaches, a broken and unclean sink and other defects, while the water closet had a hole in it and the liquid from it could be taken into the bakehouse on employees' shoes. There were also said to be mice droppings in a food store cabinet, and in pastry pans and cake trays. There was said to be a thick deposit of stinking filth on the floor of the proving oven. It was suggested, not unnaturally, that this state of affairs gave rise to a danger of food poisoning.

In another case, at Exeter magistrates' court, a company, having pleaded not guilty, was convicted on five out of six offences concerning the cleanliness of food. The summonses alleged the sale of rice containing mouse dirts, possession of oats and almonds unfit for human consumption in that they contained mouse dirts, and the failure to protect bacon from contamination in a room which was dirty. The company was also summoned for being the occupiers of a food room the floors of which were not clean, and being the occupiers of a food room in which mouse dirt was allowed to accumulate.

The matter came to light when the purchaser of some rice thought she found mouse dirts in it, and it was taken to the health department. As a result the premises were visited by the sanitary inspectors.

Publicity is of considerable importance in this matter of cleaner food and cleaner premises. Purchasers of food which appears to be contaminated do right in bringing it to the sanitary authorities so that inquiry can be made as in the Exeter case.

Taking Wild Plants

At one time people were free to take not only wild flowers growing in the country, but also to take home a few roots and plant them in the garden. No harm was done, as the number taken was not enough to spoil the countryside. With the advent of more and more trippers the countryside was in places in danger of being robbed of such flowers as primroses and cowslips, and it was even said that lorries were sometimes sent out and returned with quite a load of wild plants, subsequently to be sold.

The Larceny Acts deal with the taking of trees, shrubs and cultivated plants, but it has been felt necessary to provide specially against the taking of primroses and other flowers, as well as ferns, by means of local byelaws.

Evidently these byelaws are not sufficiently well known. A man who was fined in Devonshire for uprooting 42 primroses growing in a roadside hedge was said to have told a policeman that he did not know he was doing anything wrong as it was allowed in the county in which he lived, but, says the newspaper report, he was mistaken, as the county council in question has a byelaw in almost the same terms as the one in force in Devonshire.

In these days of constant exodus from towns to countryside such byelaws are necessary if the natural beauty of woods, fields and hedgerows is to be preserved.

School Uniform

Uniform is generally something of which the wearer is expected to be proud, though it can be just the reverse, as in the case of prison clothing. In the main, however, the uniform associated with a regiment, an organization or a school, is prized and respected. So far as service uniforms are concerned, an Act of Parliament imposes penalties on those who wear them so as to bring them into contempt.

School uniforms are popular with many children and parents, who are proud of the school and think the uniform becoming. Some parents, however, have misgivings, as has been shown by a

discussion at an open day of parents and teachers in connexion with a junior primary school in Newcastle. The head mistress had proposed the wearing of a school uniform, the cost of which, it was said, would be in the region of £12 in the case of a girl and rather less for a boy. It would not, of course, be compulsory, but as was suggested by one parent, those children who did not conform would feel out of it and might be kept out of some school activities. One mother said she could not afford to pay the cost, and after the meeting it appeared that there was considerable support for her attitude. An alternative suggestion was made that a badge, or a school blazer would be more acceptable. That sounds reasonable, as the blazer would be less expensive than a complete uniform and would sufficiently represent the school. It does not appear exactly what the proposed uniform is to include, but at all events the cost seems high, compared with that of the clothes in which many small children could be sent to school.

We have no doubt the matter will be settled satisfactorily. Teachers and education authorities certainly have no desire to embarrass either parents or children by asking something that some parents cannot afford to do.

No Side-Saddle Pillion Passengers

Ladies who wish to ride pillion on two-wheeled motor cycles must wear skirts wide enough to enable them to ride astride. One who rode side-saddle because her skirt was so tight found herself summoned and fined 10*s.* for aiding and abetting the driver in an offence which was, presumably, contrary to s. 16 of the Road Traffic Act, 1930. This provides that it is not lawful for any person in addition to the driver to be carried on a two-wheeled motor cycle otherwise than sitting astride the cycle and on a proper seat securely fixed to the cycle behind the driver's seat. The vehicle, in the case in question, was a motor-scooter.

Linked with the requirement of s. 16, *supra*, is that of reg. 101 of the Motor Vehicles (Construction and Use) Regulations, 1955, which is as follows: " If any person in addition to the driver is carried astride any two-wheeled motor cycle (whether a side car is attached thereto or not) suitable supports or rests for the feet shall be available on such cycle for that person."

To complete this note we should perhaps refer also to s. 20 of the Road Traffic Act, 1934, which makes it unlawful for more than one person to be carried on a road on a bicycle *not* propelled by mechanical power unless it is constructed or adapted for the carriage of more than one person. The circus feats sometimes performed by small boys in back streets are clearly unlawful under this section.

Traffic Training for Young Cyclists

Cyclists have always been subject to a higher proportion of road accidents than many other road users, and child cyclists in particular need all the training and instruction that can be made available to them. It seems to us, therefore, that the Croydon school which has made it a rule that only those scholars who have passed a proficiency test may bring their bicycles to school is playing a useful part in educating its pupils in proper behaviour on the roads.

The scheme, as reported in the *News Chronicle*, is that the tests are conducted by two police sergeants on lines laid down by the Royal Society for the Prevention of Accidents. There is a cycle inspection to insure that the vehicle is in proper order and properly maintained and the tests are:

1. Riding the cycle in a narrow lane, weaving between wood blocks set 5 *ft.* apart.

2. Braking and parking at the kerb.

3. Pulling out from and into the kerb, approaching a " halt " sign and turning right.

4. Road signals.

5. Comprehensive test with " halt " sign, pedestrian crossing and traffic lights.

Those who pass the tests are entitled to wear a green " cycling proficiency " badge.

The whole idea seems to us a good one. It engenders a competitive spirit which should make the youngsters enjoy it and enter into it whole-heartedly as a kind of game rather than as a task to be endured. In learning what is necessary to pass these tests they must learn about behaviour on the roads generally. This should stand them in good stead not only as cyclists but also as pedestrians and later, one hopes, as motor drivers if the opportunity comes their way.

More about " Three-wheelers "

At p. 238, *ante*, we published a note of the week under the heading " The Learner Driver in a Minicar." We gather from a report in the *Yorkshire Post* of May 14 that this matter is still causing concern to some courts and to the motor trade. The report deals with the prosecution of a learner in a three-wheel Bond Minicar which was unsuccessful because the bench decided that there was so much doubt. As we indicated in the note of the week referred to above we cannot appreciate why there should be such a doubt because it seems to us to be based upon the suggestion that a three-wheeled vehicle is a bicycle, a proposition which seems to involve a contradiction in terms.

However, we find that the report of May 14 states that although the prosecution gave notice of appeal, presumably by an application for a case to be stated, it was decided after consultation with the Ministry of Transport not to continue with the appeal. The report adds that at the hearing in the magistrates' court the defence contended that the matter was of great concern to the motor trade and that the magistrates were being asked to make new laws and to overrule what had been the accepted position. It is further stated that " the Ministry of Transport is understood to be considering an amendment to the regulations for learner drivers of three-wheeled vehicles."

We do not dispute, or rather we are prepared to accept if it is so stated, that for some reason it has come to be accepted that a " learner " in a three-wheeled vehicle constructed to carry a passenger does not need to be accompanied by a qualified driver but we have not yet seen any argument put forward to support this proposition and we cannot appreciate, therefore, why there should be any need for the suggested amendment of the regulations.

Green Fingers in the Red

Sir Frank Tribe, Comptroller and Auditor General, disclosed in his recently issued report on hospital finances that farming and gardening were among the less successful of the activities controlled by the hospital boards and management committees: in fact in 54 market gardens out of the total of 123 there was insufficient produce grown to cover the wages of the gardeners, while a considerably larger number of gardens, amounting to about three-quarters of the whole, showed trading losses amounting to £47,000. Some farming was also unsuccessful and the Ministry of Health has now ordered 47 out of 190 hospitals with farms to cease completely, while others have been told to reduce substantially the acreages farmed.

It must be confessed that it is not only hospital staffs whose fingers are not green enough to keep the red figures out of the accounts. The same position obtains

with a number of local authorities who maintain gardens attached to children's homes, old people's homes, or who own farm institutes. We have been able to inspect a selection of detailed cost accounts recording the financial results of these operations and some were quite amazing: we recall one case where the potato crop failed on a number of occasions to equal the weight of seed, which was not altogether surprising and not entirely the fault of the gardener as the so called soil was largely pit refuse thinly overlaying solid rock. The point, of course, was that no person concerned to make ends meet would think of market gardening in such a locale. Another feature presenting great difficulty at present is the recruitment and retention of adequately trained and experienced personnel. The wages of a Class I gardener under the Ancillary Staffs Council rates amount to £8 4*s*. per week and a propagating gardener (who is required to be capable of a most varied and extensive range of duties) gets 2*s*. more. These sums are not sufficient to attract everywhere the best men.

Some authorities have long since anticipated the Ministry's action and because of the difficulties to which we have referred, together with the fact that one of the reasons for the existence of many gardens, namely that they should provide occupation for the residents, has now disappeared, have ceased to grow vegetables and put the land to alternative use or where possible, let it. By so doing they have saved their ratepayers useful sums of money and by purchase ensured at least as good a supply of vegetables for the consumers as they previously enjoyed.

Scaffolding and Windows

The decision in *Owen* v. *Gadd and Others* [1956] 2 All E.R. 28, turned upon the covenants of a lease, and should not be understood as governing the case where scaffolding or other building work interferes with a person's premises, if there is no contractual relation between that person and the person who carries out the work. A lock-up shop had been let for a retail business, which required as an ordinary incident of trade that the shop-keeper should be able to display goods in the windows. The lessors had covenated in the usual terms that the lessee should quietly hold and enjoy the premises without interruption or disturbance from the lessor. Unfortunately for himself, the lessor had not included in the lease a clause entitling him to carry out necessary work on other parts of the premises. Soon after the tenancy began, it became necessary to repair the upper part of the building, which was not included in the lease; builders instructed by the lessor erected scaffolding in such a way that the public were impeded in their access to shop windows and the shop door. Upon having their attention drawn to what was happening, the lessors instructed their builders to do the work as quickly as possible, so that it was finished in 11 days instead of the six weeks which had been expected. Upon these facts, the shop-keeper sued for damages for breach of covenant; a course which looks a little surprising, the more so that in the county court the damages awarded came to £2 only. The decision of the county court Judge was upheld by the Court of Appeal. In the leading judgment Denning, L.J., said that it seemed strange to appeal over a matter of £2, but that the reason was that the lessors owned other shops, and were anxious not to have a precedent established. The moral seems to be that local authorities, who often own premises of which the ground floor is let for business, would be well advised, as would other landlords, to include in their leases a right of access and of carrying out building work to the remainder of the premises. There is another possible moral. The scaffold poles in this case had remained for no more than 11 days, which might have been considered too short a period to justify a claim for damages. Nevertheless damages were given, and the case may thus have a bearing upon the fairly frequent cases where there is a temporary interference by one person (often a local authority) with another person in the course of necessary work, though no contractual relation exists between them.

Payment for Illegal Building

The case of *Frank W. Clifford, Ltd.* v. *Garth and Another* [1956] 2 All E.R. 323, was a relic of the Defence Regulations and civil building licences. Nevertheless similar questions could, we think, arise under the ordinary law. In connexion with civil building licences, we have had to advise on such questions from time to time. The maximum lawful cost of work in the particular case was £1,000. The work was conversion of a building for use as a coffee bar and restaurant, and no firm tender was considered possible. There were extensions and alterations of the instructions given by the building owner as the work proceeded, until the cost was nearly £2,000. The owner paid something on account, but when sued for the balance set up the defence that the whole work had been illegal. The Court of Appeal upheld the decision of Harman, J., sitting as an additional Judge of the Queen's Bench Division, that it was only the excess amount which was irrecoverable by reason of the illegality. There was however an indication in the leading judgment given by Denning, L.J., that the result might have been otherwise if the contract had been for a single indivisible building operation, known from the first to cost more than could lawfully be spent. This suggests an interesting line of thought, about the recovery of the cost of building work which is illegal for some reason existing in permanent legislation—say because it contravenes local building byelaws, or because planning permission has not been obtained.

Hints for the Chancellor (4)

It is now largely accepted that substantial economies in government spending can be achieved only by major alterations of government policy: sober politicians and reputable journalists have emphasized that the possible saving in administrative costs which the most prolonged and thorough scrutiny could produce would represent only a tiny percentage of total expenditure. This cannot mean, however, that attention should be altogether diverted from the administrative field for there is no doubt that the elimination of useless records and streamlining of systems would result in economies which would be well worth while. If we are told that such savings represent only a small fraction of some huge total the information is quite superfluous and irrelevant if intended to discourage investigation.

We have previously referred to the detailed item by item control and the unnecessary complications of the regulations governing the financial arrangements in relation to civil defence, approved schools and parental contributions towards the cost of maintaining children in care: in all these cases simplification and contraction of records would save much time and manpower. Another example of the same kind is found in the financial and statistical requirements of those civil servants concerned with the youth employment service, an activity which judged by total expenditure is one of the least important of those grouped under the education service: in a typical county, for example, it may well amount to about one-half of one *per cent.* of education expenditure. Nevertheless, a circular from the Ministry of Labour, dated March 1, 1956, requires authorities in submitting their grant claims "in order that the Ministry's records may be kept up to date" to submit with each

claim a statement showing rent, rates and/or loan charges or, where appropriate, apportioned outgoings in respect of each office separately. We entirely fail to comprehend the necessity for such records or to imagine to what useful purpose they can be put. Premises are rented in connexion with many other services where other departments are concerned and no such details are required. For example, expenditure on the provision of clinics in connexion with the care of mothers and young children substantially exceeds that on premises for the youth employment service, but no comparable details are required by the Ministry of Health.

Neither does that Ministry require personal salary histories of staff employed, whereas the Labour Ministry want detailed information about all staff changes and a full list showing the staff at each office, with grades and salaries on April 1.

These discrepancies of practice are disconcerting enough in themselves but more so in what they indicate. It is freely said that the civil service has become too big for any government to control: phenomena of the sort we have mentioned can only lead to the belief that the service cannot even perform this function for itself.

APPLICATIONS TO RESTORE DRIVING LICENCES

Commenting on the article at p. 294 of this year's volume a correspondent asks whether, when that article was written, s. 86 of the Magistrates' Courts' Act, 1952, was duly considered. He also suggests that the reference in s. 7 (3) of the Road Traffic Act, 1930, to " the court before which he was convicted or by which the order was made " is not a reference to two alternative courts but is one which merely takes into account the fact that in some cases disqualification follows automatically on conviction (unless special reasons are found) and in others there can be no disqualification unless the court specially orders that there shall be.

We would like to consider the second of these two points first. The general power to disqualify is found in s. 6 of the Road Traffic Act, 1930, as follows: " Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle may in any case . . . and shall where so required by this part of this Act, order him to be disqualified . . ." Then follows the part of the section relating to endorsement of a driving licence " and may in any case, and shall where a person is by virtue of a conviction disqualified for holding or obtaining a licence, or where an order so disqualifying a person is made, or when required by this part of this Act, order that particulars . . . shall be endorsed on any licence . . ."

The point we would stress here is that the only court which by s. 6 is authorized or required to do the various acts referred to in the section is " any court before which a person is convicted." From this it would appear that, apart from some provision authorizing a court other than the convicting court to order disqualification, there is no point in s. 7 (3) in referring to any court other than the court before which the person was convicted, because whether the disqualification follows conviction or is specially ordered it is still the act of " the court before which he was convicted." This leads us to inquire whether there are any provisions entitling a court other than " the court before which he was convicted " to order disqualification. It seems to us that there are such provisions in three cases:

1. When there is an appeal to quarter sessions from a conviction or sentence in a magistrates' court the appeal court may, *inter alia*, " make any such other order in the matter as they think just and by such order exercise any power which the court of summary jurisdiction might have exercised " (Summary Jurisdiction Act, 1879, s. 31 (1) (vii), as amended).

2. When there is a committal to quarter sessions with a view to a sentence of borstal training, quarter sessions may so sentence him or " in any case deal with him in any manner in which the court of summary jurisdiction might have dealt with him." (Criminal Justice Act, 1948, s. 20 (5) (*a*) (ii)).

3. When there is a committal to quarter sessions for sentence " the appeal committee or court of quarter sessions shall inquire into the circumstances of the case and shall have power to deal with the offender in any manner in which he could be dealt with by a court of quarter sessions before which he had just been convicted of the offence on indictment " (Criminal Justice Act, 1948, s. 29 (3) (*a*)).

Provisions corresponding to those in (1) and (2) were in force when the Road Traffic Act, 1930, was passed; those in (3) have been added since. It is easy, therefore, to give a meaning to the words from s. 7 (3) of the 1930 Act to which we refer in the first paragraph of this article " or by which the order was made " if we take them as meaning, at the time that section was passed, a court of quarter sessions hearing an appeal, or considering whether or not to pass a sentence of borstal training on a defendant committed from a magistrates' court. Cases under s. 29 are now also included. It seems to us that but for the need to provide for orders of disqualification made in such circumstances there would have been no need to add the words, in s. 7 (3) " or by which the order was made " because the magistrates' court would always be " the court before which he was convicted " either in the case of a disqualification " by conviction " or of one which was specially ordered.

Having said this we must now, so far as a disqualification ordered by quarter sessions on appeal is concerned, consider the effect of the concluding words of s. 86, Magistrates' Courts' Act, 1952, and " the decision of the court of quarter sessions shall have effect as if it had been made by the magistrates' court against whose decision the appeal was brought." On full consideration of the point we can see no reason to restrict the natural meaning of these words, read with s. 86 as a whole. They seem to us to mean, as our correspondent suggests, that a disqualification ordered by quarter sessions on appeal is to have effect as if it had been ordered by the magistrates' court, *i.e.*, the court before which the appellant was convicted. What, however, is the effect, if any, on the point under consideration of the words in s. 86, *supra*, by which the subsequent action of a magistrates' court in respect of the decision of quarter sessions is to be " without prejudice to the powers of quarter sessions to enforce the decision "? In other words, is dealing subsequently with an application to remove a disqualification an exercise by quarter sessions of its powers to enforce its decision? On the whole we incline to the view that it is, and that it would be unsafe to assume, in the absence of a High Court decision on the point, that quarter sessions could not deal with an application which is seeking a modification of its own decision. We think, therefore, that there is an alternative open to an appellant who has been disqualified at quarter sessions and that he can apply either to that court or to the magistrates' court which convicted him. This alternative is also open, as we have indicated above, to an offender who was convicted at a magistrates' court and was disqualified by quarter sessions when sentenced either under s. 20 or s. 29 of the Criminal Justice Act, 1948.

THE LITTER PROBLEM

By GRÆME FINLAY, M.P., *Barrister-at-Law*

Recently the House of Commons had before it a private member's Bill on Litter promoted by Mr. John Hill, the Conservative Member for South Norfolk. Unfortunately pressure on time prevented Mr. Hill's Bill from receiving a second reading but he received a formidable volume of support not only from members but outside bodies and authorities as well. Included amongst these as well as all the local authority Associations were the Country Landowners' Association, the Institute of Public Cleansing, the Council for the Preservation of Rural England, the Commons Preservation Society, the National Trust, the Town and Country Planning Association and the National Federation of Women's Institutes besides numerous other bodies and important local authorities. The object of Mr. Hill's Bill was to make the deposit without lawful authority of any litter in any place a punishable offence. Clause 1 of the Bill was as follows:

"Any person who without lawful authority throws down, places, deposits and leaves any organic matter (whether waste or dead animal), rubble, old metal, glass, china, earthenware, tin, carton, paper or other rubbish so as to create litter or tend to create litter shall be guilty of an offence (punishable on summary conviction by a penalty not exceeding £10). "Place" was comprehensively defined in cl. 2 of the Bill as including any agricultural land, burial ground, canal, garden, lake, land subject to rights of common, National Park, nature reserve park, pleasure ground, open country, open space, seashore, street, water or woodlands.

The enforcement cl. (4) provided that only specified persons should be able to institute proceedings, *e.g.*, as respects private lands—the occupier and, as respects parish council lands, the local authority or any member of a police force. As regards the great majority of places the appropriate prosecuting body would be the local authority or police. It is a matter for regret that legislation on these lines has not been placed upon the statute book. At the present time there is a mass of piecemeal legislation regarding litter designed to cater for special cases including:

The Town Police Clauses Act, 1847, s. 28, as extended by s. 81 of the Public Health Acts Amendment Act, 1907 (streets).

National Parks and Access to the Countryside Act, 1949, s. 20 (nature reserves).

Byelaws under s. 15, Commons Act, 1876 (owners of rights of pasture).

Commons Act, 1899, s. 1 (schemes for the regulation and management of commons).

Public Health Act, 1875, s. 164, as applied by s. 8 (1) (*d*), Local Government Act, 1894 (recreation grounds, village greens, open spaces, etc.).

Law of Property Act, 1925, s. 193 (land for public exercise).

There is also power under s. 249 of the Local Government Act, 1933, for county councils and borough councils to make byelaws dealing with litter. Not all have done so, however, and still fewer institute proceedings to enforce the penalties.

The practical result today is that the problem is growing worse and the mass-consumed ice-cream and new profusion of food packaging have helped to exaggerate this process. Weekly about 25 tons of litter are picked up from the parks of the London county council and a deluge of litter has even held up play in a test cricket match in Yorkshire. In the words of a contemporary newspaper report: "Close to the day's end, when cricket threatened to be capsized in heavy seas of litter sweeping across the green . . .!" It was once pointed out in the House of Commons that the refuse appeared to differ according to the type of sporting event. Song sheets and newspapers formed the bulk of as many as 150 sacks of litter taken after a football match while speedway and greyhound racing events seemed to induce ice-cream cartons and bottles!

Quite apart from practices of this kind being unsightly they can also be dangerous. Visitors with cuts, due to broken bottles form an unwelcome and sometimes heavy addition to the casualties at seaside resorts. And of course, the litter-habit is costly. The Minister of Housing and Local Government recently indicated that in the Central London Parks alone 20,000 man-hours a year are spent collecting litter and that after a fine bank holiday there may be as much as five tons to pick up. This is a scandalous waste of labour. Why do the British public indulge in these practices? Probably the reason is to be found in the fact that many people consider they have a public right to do so. Lord Ammon tells the story of how he reproved a little girl dropping litter and was met by the retort: "Well, dad pays his rates." However, cleanliness is next to godliness and tidiness is as much a matter of habit as anything else. That is why education is so important and I think that persuasion rather than compulsion is the more desirable of the two courses. At the same time we cannot blink the fact that on current form persuasion by itself is not enough. Earl Attlee speaking at a recent anti-litter conference organized by the National Federation of Women's Institutes is reported to have said that one or two "good heavy punishments well reported" might have salutary effect in preventing litter. Of course, it is not easy to establish proof of the offence of creating litter and if by chance this is available the culprit is apt to ask why he is being picked on for prosecution. The answer to such a person is, I think, that he has been dealt with like Admiral Byng "pour encourager les autres," and that in many other spheres the law is enforced in much the same way (*e.g.*, speeding and parking offences under the Road Traffic Acts). At any rate, I do not think the present deterioration can continue to be tolerated.

In New York City and Switzerland, for example, the authorities do not hesitate to proceed against culprits and the courts impose substantial fines. In the former city there is a force of 250 uniformed patrolmen and these also receive help from the regular police force.

The answer to this problem is to redouble the efforts at education, and to proceed more vigorously against offenders. The provision of more litter boxes and baskets, on the one hand, and a force of litter-wardens specifically concerned with enforcement on the other would help to hasten on these two processes respectively. The cost of untidiness is far too high and it is a matter for real regret that Mr. Hill should not have had better luck with his public-spirited effort which attempted to put sharp teeth into the machinery designed to cope with this problem.

THE DETERMINATION OF ELECTRICITY METER DISPUTES

[CONTRIBUTED]

On the occasions when a consumer of electricity refuses to pay the amount demanded by the undertakers on the ground that he considers the meter to be inaccurate, a procedure exists for resolving the matter, as a necessary preliminary to court proceedings or other means of enforcing payment. This presupposes that a *bona fide* dispute exists between the parties; the consumer should collaborate with the supply authority in investigating whether any increased consumption recorded by the meter may not have been due to a change in the consumer's use of electricity which could arise from a change of habit such as illness, the additional use of heating, or through incorrect adjustment of controlling thermostats.

The principal provisions relating to the examination and certification of electricity meters and the settlement of disputes as to the correctness of such meters are contained in ss. 49, 50, 51 and 57 of the schedule to the Electric Lighting (Clauses) Act, 1899, and the Electricity Supply (Meters) Act, 1936, as amended by the Electricity Act, 1947.

Section 49 of the schedule to the Electric Lighting (Clauses) Act, 1899, provides that " the amount of energy supplied by the undertakers to any ordinary consumer or the electrical quantity contained in the supply (according to the method by which the undertakers elect to charge), hereinafter referred to as " the value of the supply," shall, except as otherwise agreed between the consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of this schedule, and fixed and connected with the service lines in some manner approved by the Minister of Fuel and Power." In order to appreciate the effect of this section in its application to the determination of disputes about the accuracy of electricity meters, it is necessary to consider (i) the class of consumers who are under present conditions embraced by the expression " ordinary consumer," (ii) the meaning of the expression " the value of the supply," and (iii) what is meant by the phrase " an appropriate meter duly certified."

Dealing with these three matters in the above order, there is no statutory definition of the expression " ordinary consumer " but a clue to its meaning is to be found in the definition of " general supply " in s. 1 of the schedule to the Act of 1899, where a clear distinction is drawn between " ordinary " consumers and consumers supplied under a " special agreement." This definition is as follows:

> The expression " general supply " means the general supply of energy to ordinary consumers, and includes, unless otherwise specially agreed with the local authority, the general supply of energy to the public lamps, but shall not include the supply of energy to any one or more particular consumers under special agreement.

In addition, s. 31 (repealed as from April 1, 1948, by the Electricity Act, 1947), of the schedule to the Act of 1899, which dealt with the subject of price, provided that the authorized methods of charging for energy supplied by the undertakers should apply "to any ordinary consumer (otherwise than by agreement)." Some guidance as to the meaning of the word " ordinary " in this context may be afforded by the cases dealing with ordinary and special trains. In the Scottish case of *Gilmour* v. *North British Railway* (1896) 31 Sc. L.R. 651, it was held that fast trains were to be regarded as ordinary trains within the meaning of the Railway Act, if they were shown in the timetable and ran regularly for conveying passengers. The point of this is that, so used, the ordinary train is distinguished from a special train which in *Turner* v. *London and South Western Railway* (1874) 43 L.J. Ch. 430, had been said to be one having an object other than ordinary traffic purposes of the railway.

Applying the principles of these railway cases to electricity, it seems that an ordinary consumer of electricity is one who is entitled to have a supply from the mains as of right and according to a tariff which is settled in advance for consumers generally, as distinct from a consumer who is not so entitled and who can be required by the undertakers to enter into a special agreement as a condition precedent to such consumer's becoming entitled to be supplied in accordance with the tariff.

Under the legislation which existed before the Electricity Act, 1947, the general mass of consumers supplied under published tariffs were ordinary consumers, and consumers with whom a special agreement was made represented the other class. This distinction between ordinary consumers and consumers supplied by virtue of an agreement still exists under the Electricity Act, 1947, and the Electric Lighting (Clauses) Act, 1899, as amended.

Under the existing legislation, there are two classes of consumers, one being a statutory consumer who is entitled to be supplied by virtue of s. 27 of the Act of 1899 (as to the expression " statutory consumer " *see Stevens* v. *Aldershot Gas, Water and District Lighting Co.* (now Mid-Southern District Utility Co.) (1932) 102 L.J.K.B. 12) ; and the other a non-statutory consumer who has no right to be supplied by virtue of any statute but who is supplied in pursuance of an agreement made between the electricity undertakers and himself, in exercise of the undertakers' power to enter into such agreements contained in ss. 2 (5) and 37 (7) of the Electricity Act, 1947. Statutory consumers are therefore consumers who are entitled, as of right, to be supplied in accordance with the tariffs published under s. 37 (3) of the Electricity Act, 1947, and the expression " ordinary consumer " is considered to be synonymous with the term statutory consumer previously mentioned. Statutory consumers are those who require a supply at low or medium voltage, and therefore mainly comprise domestic and small commercial and small industrial users. The supply to such statutory or ordinary consumers therefore requires to be ascertained by a duly certified meter. The provisions of s. 49 enabling an agreement to be made between the consumer and the undertakers as to the method of ascertaining the value of the supply are rarely exercised in the case of a statutory or ordinary consumer. Supplies to consumers who are not statutory or ordinary, *e.g.*, large industrial consumers, often require special metering equipment to be provided, sometimes embodied in switchgear. An agreement is invariably prepared in such cases, which contains clauses dealing with the provision of meters and with the settlement of any disputes as to the accuracy thereof.

The expression " value of the supply " is defined as meaning either the *amount* of energy supplied by the undertakers to any ordinary consumer or the *electrical quantity* contained in the supply, according to the method by which the undertakers elect to charge. It is submitted that the expression refers to the electrical (but not the financial) value of the supply, according to whether the supply is measured as energy (kilowatt hours) or as quantity (ampere hours) at a declared constant voltage.

The third point concerns the meaning of the phrase " an appropriate meter duly certified " and calls for consideration of the provisions of the schedule to the Electric Lighting (Clauses) Act, 1899, and the Electricity Supply (Meters) Act, 1936, regarding the certification of meters. Section 50 of the Act of 1899 provides as follows:

> " A meter shall be considered to be duly certified under the provisions of this schedule if it be certified by an electric inspector appointed under this schedule to be a meter capable of ascertaining the value of the supply within such limits of error as may, as respects meters of the class to which the meter belongs, be allowed by the Minister of Fuel and Power, and to be of some construction and pattern approved by the Minister of Fuel and Power, and every such meter is hereinafter referred to as a ' certified meter ': Provided that where any alteration is made in any certified meter, that meter shall cease to be a certified meter unless and until it is again certified as a certified meter under the provisions of this schedule."

In *Joseph* v. *East Ham Corporation* [1936] 1 K.B. 367, a local authority were the undertakers for the supply of electricity in their district, but no electric inspector had been appointed for that district, and consequently the meters which the local authority supplied to their consumers, although standard meters, were not duly certified as required by s. 49 of the schedule to the Act of 1899. A consumer of electricity objected to the demand made upon him for electricity alleged to have been consumed by him during a summer quarter. He alleged that either the meter had incorrectly registered the amount consumed or the meter had been incorrectly read. After a long correspondence the local authority cut off the consumer's supply of electricity, alleging that they had the right to do so under s. 21 of the Electric Lighting Act, 1882. In an action in a county court by the consumer for an injunction to restrain the local authority from cutting off his supply of electricity, the county court Judge held that there was a *bona fide* dispute between the consumer and the local authority as to the amount due, and that therefore the local authority were not entitled by s. 18 of the Electric Lighting Act, 1909, to cut off the consumer's supply of electricity. On an appeal by the local authority it was held (1) that having regard to the finding of fact by the county court Judge that there was a *bona fide* dispute between the parties the local authority were not entitled by s. 18 of the Electric Lighting Act, 1909, to cut off the consumer's supply of electricity, since the cutting off of a supply of electricity was a most effective and practical refusal of supply; (2) that inasmuch as the meter furnished by the local authority to the consumer was not a duly certified meter as required by s. 49 of the schedule to the Electric Lighting (Clauses) Act, 1899, the register of that meter was not conclusive evidence of the value of the supply. As a result of the decision in this case, the Electricity Supply (Meters) Act, 1936, was passed. This Act came into force on May 29, 1936, and was designed to remedy the state of affairs resulting from the above decision, as the finding of the court that the register of an uncertified meter was not conclusive evidence of the value of the supply meant that undertakers were virtually unable to enforce payment in respect of electricity which was measured by such meters.

The Electricity Supply (Meters) Act, 1936, consequently provided for the appointment of a new class of officials called " meter examiners " who were to take over the duties previously allocated to electric inspectors by the Act of 1899, with regard to the examination and certification of meters. These meter examiners were " charged with the examination and certifying of meters used or intended to be used in connexion with the supply of electricity by authorized undertakers " and were given all the powers and duties of electric inspectors conferred or imposed by ss. 50, 51 and 57 of the Act of 1899. Section 2 of the Act of 1936 requires authorized undertakers to provide and maintain in proper condition such suitable apparatus as may be prescribed or approved by the Minister of Fuel and Power for the examination, testing, and regulating of meters used or intended to be used in connexion with the supply of electricity, and to afford to meter examiners all necessary facilities for the use of the said apparatus for the purpose of the exercise and performance of their powers and duties in relation to such meters. Section 3 of the Act of 1936 contains transitional provisions covering the period which must elapse before all meters are duly certified. This section provides that meters installed on the premises of an ordinary consumer before July 1, 1938, are deemed for all purposes to be proper meters for ascertaining the value of supplies until first disconnected and removed after July 1, 1938, or at the expiration of 10 years from July 1, 1938, whichever first occurs. This section does not apply in the following cases:

(*a*) to any meter which has been certified under the Act of 1899;

(*b*) to any meter which is the subject of a special agreement between the consumer and the undertakers.

The registers of such meters as are embraced by s. 3 are to be merely evidence of the value of the supply and not, except where there has been a final and binding decision made by a meter examiner under s. 3 (2), conclusive evidence of such value.

By the Defence (General) Regulations, 1939, S.R. & O. 1939 No. 927 reg. 60CB (added by S.R. & O. 1943 No. 914, amended by S.R. & O. 1944 No. 162, and revoked by S.R. & O. 1947 No. 2197), the certification of meters was temporarily suspended and the above period of 10 years was extended for a further two years. The 10-year period was further extended to 15 years by s. 52 of the Electricity Act, 1947, and was again extended to 20 years by the Electricity Supply (Meters) Act, 1952, which means that all existing uncertified meters will require to be certified by July 1, 1958, unless the period is again extended.

In the foregoing paragraphs of this article an attempt has been made to provide the necessary background of information required to appreciate the procedure to be followed in a meter dispute. This procedure varies slightly according to whether the meter has been certified or not. Disputes between electricity undertakers and any ordinary consumer as to whether any meter is in proper order for correctly registering the value of the supply, or whether the value of the supply has been correctly registered in any period, can be determined by a meter examiner:

(*a*) in the case of a *certified* meter under s. 57 of the schedule to the Electric Lighting (Clauses) Act, 1899, on the application of the undertakers or the consumer;

(*b*) in the case of an *uncertified* meter to which the transitional provisions of s. 3 of the Electricity Supply (Meters) Act, 1936, applies, *i.e.*, an uncertified meter installed before July 1, 1938, and not disconnected and removed since that date, on application by the consumer.

Section 57 of the schedule to the Electric Lighting (Clauses) Act, 1899, provides as follows:

> " If any difference arises between any consumer and the undertakers as to whether any meter, whereby the value of the supply is ascertained (whether belonging to the consumer or to the undertakers), is or is not in proper order for correctly registering that value, or as to whether that value has been correctly registered in any case by any meter, that difference shall be determined upon the application of either party by an electric inspector and that inspector shall also order by which of the parties the costs of and incidental to the proceedings before him shall be paid, and the decision of the inspector shall be final and binding on all parties.

"Subject as aforesaid, the register of the meter shall be conclusive evidence in the absence of fraud of the value of the supply."

It was held in the case of *Hendon Electric Supply Company* v. *Banks* (1917) 87 L.J.K.B. 790, that until such a dispute is determined as provided by s. 57, *supra*, the electricity undertakers cannot sue to recover the value of electricity consumed. In practice it is customary for the electricity undertakers to exercise their powers of placing a "check" meter in the premises immediately a consumer disputes the accuracy of his meter. The undertakers' powers to place a "check" meter on the premises of any consumer are contained in s. 59 of the schedule to the Act of 1899, which provides that such meter shall be of such a construction and pattern and shall be fixed and connected with the service lines in such a manner as is approved by the Minister of Fuel and Power, and shall be placed between the undertakers' mains and the consumer's terminals, unless the consumer and the undertakers agree to its being placed elsewhere. After the check meter has remained installed in the consumer's premises alongside the disputed meter for a specified time, a comparison is made between the recordings shown on both meters. If at the expiration of the specified time such a comparison shows that the original or disputed meter is recording within the prescribed limits of error laid down by an Order of the Electricity Commissioners in 1937, this normally results in a satisfactory settlement of the matter. The prescribed limits referred to above are an error not exceeding 2½ *per cent.* plus or 3½ *per cent.* minus at any load at which the meter may be operating. Irrespective of the evidence provided by the check meter, however, either party is at liberty to have the dispute resolved by a meter examiner, and, as previously mentioned, this appears to be a *sine qua non* to the exercise of the undertakers' rights to recover the amount of energy alleged to have been consumed during the disputed period.

MISCELLANEOUS INFORMATION

LEICESTER PROBATION REPORT

During the year 1955 the number of persons placed on probation in the city of Leicester was a record, in spite of a slight fall in the number of offenders appearing in court. The year has also been notable for the probation service because the corporation agreed to buy certain premises for the use of staff, and it is confidently anticipated that adequate accommodation will be provided for everybody. There will be a separate room for each probation officer so that confidential interviews can take place under suitable conditions, and there will be proper waiting rooms.

On the question of statistics of successes Mr. Kenneth Fogg, the principal probation officer writes: "The percentage of satisfactory cases compares closely with previous years, but, though it may not be as high as in other areas, allowance must be made for the fact that the Leicester courts only place on probation persons whom they expect to get into trouble again unless constructive supervision is applied. Of those who broke down under supervision, only eight were subjected to a further probation order. This appears to be a small number compared with other areas and reflects the realistic attitude with which both magistrates and probation officers face their respective responsibilities. Nevertheless, I do not wish to create the impression that a second probation order is bad practice. Examination of individual cases shows that some remarkable results have been achieved with offenders during a second and even, in a few cases, a third period of probation."

Mr. Fogg is obviously well satisfied on the subject of remands for inquiries, and he notes that apart from one case, every adult person as well as every juvenile, was remanded for inquiry by a probation officer before a probation order was made.

During the year the probation officers were requested to arrange a period of "Home Leave" for men serving long sentences at training prisons. Amongst the cases were a man serving a life sentence for murder and another serving a long sentence for attempted murder.

PLYMOUTH JUVENILE COURT REPORT

An interesting feature in the report of the juvenile court panel for the city of Plymouth consists of the brief facts of a number of problem cases, of which we quote two.

Two boys from behind the iron curtain of Germany, who asked for a total of 37 cases of breaking and entering to be taken into consideration, were plainly contemptuous of our English juvenile court methods, which they appeared to think far too "soft."

A girl who attempted to set fire to Southview Girls' Welfare Home in order that she might pose as the heroine who extinguished the fire and saved the residents.

Following a meeting at which a Home Office official gave an address about attendance centres, the following recommendations were sent to the Home Office:

1. That the minimum age limit for the attendance of boys at attendance centres be reduced to 10 years.

2. That the maximum number of hours attendance at attendance centres be increased to 18.

3. That boys found guilty of summary and non-indictable offences may also be dealt with by being ordered to attend at the attendance centre.

We are unable to understand the last recommendation, since s. 19 of the Criminal Justice Act, 1948, is not limited to indictable offences.

NATIONAL CORPORATION FOR THE CARE OF OLD PEOPLE

The eighth annual report of the National Corporation for the Care of Old People shows that since the corporation was established in 1947 grants totalling nearly £900,000 have been made from the funds which were provided by the Nuffield Foundation and the Lord Mayor's National Air Raid Distress Fund. For the past two years the corporation has been concentrating much of its efforts and expenditure on the care of old people in their homes. It is felt that some old people may be under the erroneous impression that when they can no longer care for themselves the only alternative is admission to a home and the Governors are anxious to find out more about the difficulties which arise in such cases. They have accordingly appointed in two areas a social worker to visit all those who ask for advice, to give such help as is within their power and to report periodically to the governors.

It was stressed in the seventh annual report that the immediate need was to build greater numbers of suitable dwellings for old people. Attention is drawn in the present report to the valuable work which can be done by voluntary organizations, as by local authorities, in converting existing properties into flatlets for old people in respect of which improvement grants may be obtained under ss. 20 or 31 of the Housing Act, 1949, as amended by the Housing Repairs and Rents Act, 1954. It is thought that many voluntary societies—and even some local authorities—are not aware of the changes made in this respect by the Act of 1954. In order to enable a few schemes of this nature to be started quickly and so demonstrate their usefulness, the governors have set aside some of their funds to enable grants to be made in approved cases to voluntary organizations carrying out such conversions on condition that an improvement grant is also received through the local authority.

Much has been said and written as to the value of chiropody for old people and expressing regret that, for financial reasons, the limited services now available under the National Health Service have not been expanded. In the meantime the corporation is providing £60,000 to be spent over a period of three years by voluntary organizations providing chiropody at reduced rates for old people whose circumstances do not permit them to pay the full rates for treatment.

Old peoples' homes.

Turning to the communal care of the aged it is pointed out that the subject of the care of the infirm aged has probably been more under discussion than any other single subject in this field during the past few years. This is a matter which has continually received the attention of the local authorities' associations and the National Old Peoples' Welfare Council. It is the general experience of those providing homes that the residents are getting older and are often even admitted at an advanced age. Referring to the suggestions in Ministry circular 3/55 as to the type of accommodation which might

be built for the infirm aged, the governors believe that whilst it is essential to provide homes for this type of person there may well be considerable difficulties which will arise in carrying out the proposals, not the least of which will be the costs of maintenance and the division of responsibility between home and hospital for certain infirm old people. In order to test their ideas it has been agreed that the corporation shall build such a home in Leicester, taking the suggestions made in the Ministry circular as a guide. This pioneering effort of the corporation will be watched with interest by local authorities as well as by voluntary bodies.

It is generally accepted that there is a need for homes which can temporarily take care of old people to give relief to relatives who normally look after them. This also is a matter to which attention has been drawn by the National Old People's Welfare Council. The need appears to be particularly acute where the old person needs nursing attention. There are certain difficulties inherent in running these homes and perhaps the greatest anxiety to the managing committee is keeping the home filled throughout the year. The governors are prepared to consider setting up a home of this kind if a suitable area can be found and provided there is a reasonable prospect of a sufficient demand for such accommodation being forthcoming.

The future.

It is agreed that considerable advances have been made in the field of old people's welfare during the past years, thanks to the efforts of voluntary and statutory bodies but it is suggested that the position has not been reached where there can be any relaxation. As long as the problem of the elderly chronic sick is unresolved there is the need for great and co-ordinated effort. It is pointed out, as has been done so many times before, that there are chronic sick to be found in general and mental hospitals, in local authority and voluntary homes and even in their own homes. Whilst in theory they are the responsibility of the hospital there are in practice too few beds to accommodate them without preventing the admission of those who are acutely ill. It appears to the governors that the main hope of solution is to aim at more prevention than is now attempted. This requires acute observation by those in the field, intelligent anticipation of trouble, and a fine sense of the right moment to act. It is suggested that it is perhaps in the domiciliary services that the greatest increase is required. Finally the view is expressed that the powers of the statutory bodies being limited in preventive work, much depends on the ingenuity, enthusiasm and above all the willingness of voluntary committees to work together with the statutory authorities where the need is greatest.

CITY AND COUNTY OF THE CITY OF EXETER: CHIEF CONSTABLE'S REPORT FOR 1955

It is a pleasure to find that at least one police force is almost " up to strength." This force finished the year with an establishment of 117 and an actual strength of 116, although two of these are non-effective so far as Exeter is concerned, one being on the directing staff of the Police College and one an instructor at No. 7 District Training Centre.

We seem to remember referring last year to the refresher course for sergeants which the chief constable organized at Mardon Hall during the Easter recess of the University of Exeter. With Home Office approval this course was again organized in 1955, it being requested by the chief constables of the district. Fifty sergeants attended, and valuable help was received from the principal and staff of the University.

Hope is expressed that the long expected and much needed new police headquarters will be begun soon. The need for the new accommodation continues to increase as police methods progress to meet ever changing conditions, and the report states that " only the realization of our need being met in the reasonably near future has made it possible to continue in our present buildings." The chief constable must be wondering whether the recent pressure for greater economy will lead to this hope of a new building being still further deferred.

The number of indictable offences detected was 540, the 1954 figure being 529, but the number of offenders was considerably larger in 1955, the figures being 374 and 298 respectively. In 1955, 816 crimes were known to the police, so that the detection rate was 66·1 *per cent.* The 374 offenders included 136 juveniles, who were responsible for 185 of the detected offences. In 1954 the number of juvenile offenders was only 76 and the increase in 1955 is described by the chief constable as " a very disturbing fact."

Tribute is paid to the effective work of the constable who is employed as a crime prevention officer. He has given many talks to various societies, many firms have installed added safeguards to their premises after consultation with him and it is further recorded that insurance company surveyors consult him on security measures for buildings in which their companies have an interest.

Anyone who has travelled to the West Country during the summer months and has included Exeter in his itinerary knows that traffic congestion there is serious. The report records that an experienced town planner stated in 1946 that " overcrowding is too mild a term for the degree of congestion that exists during holiday times. The condition is nearer strangulation than congestion." The chief constable says that the position has worsened since then, because it has not been possible to provide the necessary relief roads. He states also that the stationary vehicle also continues to be troublesome and in his view adequate car parks are a modern necessity for any city. To be of full use they must be sited near the main shopping centre and must be inexpensive or free. From the police and traffic control point of view it should be recognized that motorists will not use car parks unless they are convenient and cheap and every encouragement should be given to motorists to park off the highway. We appreciate the force of this argument, but in how many cities is there adequate space in or near the centre of the city to make it possible to act as is suggested ?

There were 579 prosecutions, with 559 convictions, for motoring offences. Attention is called to a substantial increase in pedestrian crossing cases and to the fact that there were three times as many cases as in 1954 of driving vehicles in a dangerous condition. Lest this should give a wrong impression we add that the 1955 figure was 12. There were seven " s. 15 " charges. All these offenders were convicted and fined and disqualified for 12 months. Dangerous driving prosecutions totalled 12 and careless driving 70. Five of the 12 were acquitted on the more serious charge, but three of them were convicted of careless driving.

THE HEALTH AND WELFARE SERVICES REACTION TO THE GUILLEBAUD REPORT

There was an interesting debate in the House of Commons on May 7 on the Report of the Committee of Inquiry into the cost of the National Health Service, generally known as the Guillebaud Report by reason of its chairman being Mr. C. W. Guillebaud, C.B.E. In opening the debate the Minister of Health (Mr. R. H. Turton) said the government agreed with and accepted the general conclusions of the committee. They accepted that at this time there should be no transfer of hospitals or mental deficiency institutions to the local health authorities. On the tripartite nature of the administration of the service it was agreed that the first objective must be to place at the disposal of the patient in his home, equally with the patient in hospital, a co-ordinated team acting under the clinical guidance of his personal medical attendant. The Minister stressed that this requires the closest possible co-operation between general practitioners and the local health authorities. It is, for instance, most important that the medical officer of health, who is administratively responsible for such a large part of the domiciliary team should be, if not a full member of the executive council, at least in constant attendance at its meetings.

As to the services provided for the elderly, recent studies of the Registrar-General showed that general practitioners devote a very large amount of their time to their patients who are 65 and older. Reports of the Ministry of Health have shown that approximately 50 *per cent.* of the time of the home nursing service is devoted to the care of the aged sick and about two-thirds of the time of the 30,000 workers in the home help service is also devoted to the needs of the aged. Health visitors pay about a million visits a year to old people and the proportion of their time devoted to the aged increases year by year. The Minister suggested that it should be the aim of the team to make it possible to keep out of hospital, including the mental hospital, all patients who can be equally well treated at home.

Local Authorities Administration.

The terms of reference of the committee did not relate to the welfare services, but there are points where the welfare services are so closely related to the Health Service—particularly in relation to the care of the aged—that the committee had to pay some regard to their provision. The committee noted with interest that a number of authorities had taken steps with satisfactory results to combine the administration of their local health and welfare services under one committee (the health committee) of the council; although in the majority of areas these services are still administered by two separate committees. In view of the very close relationship which exists between domiciliary services provided under the National Health Service Act and the National Assistance Act, and bearing in mind the close connexion between the services for the aged under the National Health Service and the provision of residential accommodation for old people under the National Assistance Act, the committee recommended that all authorities who have not yet done so should review the working of their health and welfare services to see whether their efficiency might be improved and the interests of patients better served, by combining their administration under one committee of the council, or under a joint sub-committee. The Minister commended these recommendations to local authorities.

Specialization.

Another important matter to which reference was made in the House of Commons debate was the multiplicity of specialists. The Minister said we have been going through a period of multiplying specialists not only in the social services but in many other forms of training originating from the view that more and more special knowledge and special training are required to enable an individual to tackle successfully some of the more difficult problems in social work. He stressed, however, that we must guard against the irritation and inefficiency which is sometimes caused by too many people knocking on the same front door. One way to avoid this is by examining the various specialist trainings of the different officials engaged in this work since over specialized training inevitably increases duplication of visits. In this connexion reference was made to the Working Party under the chairmanship of Miss Eileen Younghusband, C.B.E., which is examining the proper sphere of work of social workers in the health and welfare fields including mental welfare officers and visitors to physically handicapped.

Chiropody.

On chiropody for old people, the Minister said we are bound to wait until the financial position permits further expansion. The service which can be provided at any one time must depend on the resources available and important as chiropody is it would not, in his opinion, be right at the present time when additional money cannot be made available, to cut some other existing service in order to provide chiropody. In the meantime he commended the excellent work being done by the voluntary bodies in this field.

Exchequer Grants.

Local authorities receive from the Exchequer a subsidy on the lines of a housing subsidy towards the capital cost of providing new residential accommodation under s. 21 of the National Assistance Act, but the net running costs attract no exchequer grant. The committee felt that the lack of any such grant will become increasingly an obstacle to the smooth development of the hospital and local authority services, and may be expected ultimately to destroy the pattern of the service as a whole. Accordingly, the committee recommended that, as soon as financial circumstances permit, the existing exchequer subsidy towards the cost of providing new residential accommodation be abolished and that instead the net expenditure (both capital and current) in providing all residential accommodation of this type should attract a 50 *per cent.* exchequer grant. In return, the Minister would be able to require local welfare authorities to develop their services, as and when the state of the national economy permits on a scale commensurate with the needs. On this matter the Minister told the House that the recommendation must be examined as part of the whole question of general resources which can be made available for the health and welfare services; and in the meantime he said there was no evidence that the lack of a 50 *per cent.* exchequer grant was holding up provision of accommodation.

Housing for Old People.

The Minister of Housing and Local Government (Mr. Sandys) had told the House a few days previously that he had arranged for an inquiry to be made into the arrangements for housing elderly persons with the object of seeing whether, having regard to other requirements, they were receiving a reasonable share of the accommodation provided and whether this was of the kind best suited to their physical needs and financial circumstances. In the debate on the Guillebaud report the Minister of Health said the communal housing of old people would be a part, but not necessarily the main object, of that inquiry.

The Ambulance Service.

The Guillebaud Committee pointed out that efficiency and economy in the ambulance service could be further improved by ensuring that only those patients who need ambulance transport are in fact provided with it; and by organizing ambulance journeys in such a way that the maximum numbers of patients are carried for every mile run, and that the most economical form of transport is used in each case (*e.g.*, sitting-case car instead of ambulance; rail journey instead of special transport, etc.). The committee suggested that the extension of radio control of ambulance fleets was a very good means of effecting further savings in the cost of the service in many areas. By this means some authorities have already been able to reduce the number of ambulances maintained in their fleets; while others have found it possible, through radio control, to carry an increased passenger load without adding to the number of their vehicles. The committee also recommended that all hospitals of appropriate size and hospital groups which have not already done so should appoint transport officers unless alternative arrangements are working effectively and economically. The Minister told the House of Commons that he had urged hospital authorities to adopt this suggestion and was also sending a circular to local health authorities reminding them of ways in which the organization of the service can be improved and made more economical.

Priorities.

Finally the Minister told the House there were three main priorities in the Health Service. First, was the improvement of unsatisfactory or inadequate hospitals and the provision of new hospital accommodation where none or insufficient was now available; secondly, to improve the mental and mental deficiency health services and thirdly there was the problem of the care of old people which is one of the major social problems. It was his wish to make the greatest contribution he could towards its solution.

LOANS SANCTIONED, 1955/56

The total of loans sanctioned by the Minister of Housing and Local Government to local authorities in England and Wales during the year ended March 31, 1956, was £515 million. We have summarized the figures for the main services in the table below.

Purpose	*Quarter ended* *June* 30, 1955	*Sept.* 30, 1955	*Dec.* 31, 1955	*Mar.* 31, 1956	*Total*
	£m	£m	£m	£m	£m
Housing (land, dwellings, roads, sewers, etc.)	49	61	59	60	229
Advances and Grants under Housing and S.D.A. Acts ..	14	23	31	22	90
Sewerage, sewerage disposal and water supplies	18	15	17	12	62
Education	25	17	15	28	85
Miscellaneous ..	14	13	13	9	49
Total ..	120	129	135	131	515

Housing again represents the outstanding consumer of capital, accounting for almost two-thirds of the total, with education a long way behind in second place. The analysis shows clearly the difficulties facing the Government in their attempt to restrict local authority capital expenditure: if Housing and Education are accepted as priorities on which expenditure must continue, there is left a sum of £111 million. A reduction of as much as 50 *per cent.* of this residue would amount to no more than 11 *per cent.* of all capital expenditure sanctioned, and on the basis of decisions so far notified, we think it unlikely that a reduction even of this order will be achieved. It will be observed that the items of sewerage, water supplies and miscellaneous all show declining trends: the following examples illustrate details of what has happened:

Service	*Quarter ended* *June* 30, 1955	*Sept.* 30, 1955	*Dec.* 31, 1955	*Mar.* 31, 1956
	£	£	£	£
Children	304,000	132,000	129,000	68,000
Fire	675,000	527,000	346,000	204,000
Police (housing) ..	1,166,000	932,000	886,000	619,000
Police (other) ..	268,000	99,000	624,000	387,000
Highways	2,043,000	1,983,000	1,721,000	1,037,000

THE SOCIETY OF MEDICAL OFFICERS OF HEALTH

We greet the Society of Medical Officers on their centenary which they have just celebrated. It was established as the Metropolitan Association of Medical Officers and widened its scope under its present title in 1873. Local boards of health were first given power to appoint medical officers of health by the Public Health Act, 1848, but it was not until the Public Health Act, 1872, came into operation that urban and rural authorities were compelled to make such appointments. On the passing of the Metropolitan Management Act, 1855, 47 medical officers were appointed in London and it was they who formed the original association.

As is pointed out in a recent article in the *Lancet* the medical officer in the early days was embarking on a new venture; he had

no text books to consult and it was for this reason and to promote efficiency in the discharge of their duties that they felt the need of an association. The first president was Sir John Simon, who was then the first medical officer of health of the city of London. He became the first central medical officer of the Board of Health. It is fitting that in its centenary year the president should be Dr. Charles White, who until his recent retirement was also medical officer of health for the city of London.

The centenary number of *Public Health* describes the changes which have taken place in the membership and activities of the society over the years. Medical officers of health are now in a minority and the fellows include university teachers, officers in central government departments, chest physicians, medical journalists, industrial medical officers, and consultants in infectious diseases. In recent years the society has naturally been concerned with the development of the local health services under the National Health Service Act, 1946, and with other current matters such as mental health, problem families, the care of the elderly and the expanding work of health visitors, social workers, and home nurses. One of the important problems which the society has faced, and on which more remains to be done, is the collaboration of the medical officer of health with the medical staff in hospitals and with general practitioners. We are sure that in this and in other fields the society will increase in usefulness to its members, the local authorities, government departments and other bodies they serve and in the general advancement of public health for the community.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

THE IMPORTANCE OF STATEMENTS MADE AT THE TIME

When I see that your correspondent no longer commends the extension of the police discipline regulations to erring members of the public, I feel that my original letter has been worth while and has served the purpose for which it was written.

Before closing may I correct Mr. Taylor on the point concerning the composition of a tribunal under these regulations. His wording might lead one to the conclusion that the five members of the police authority had to have with them a person selected from the Lord Chief Justice's list. This is not so; the selection is either, not more than five members of the police authority, *or* a person from the Lord Chief Justice's list—not both on the one tribunal.

Yours faithfully,
R. A. BEAL,
Deputy Chief Constable.

Chief Constable's Office,
Peterborough.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

In Practical Points for May 12 (p. 305) there is a question and answer relating to adoption of a legitimated child. As adoption primarily means receiving as one's own the child of another, specific mention was made in s. 1 (3) of the Adoption Act, 1950, of adoption by the natural parent either alone or jointly. Surely this means by the mother alone or jointly with the stepfather or by the father alone or jointly with the stepmother? If it had been intended that both natural parents could adopt their own legitimate child the section would have read " by the mother and father jointly or by the mother or father either alone or jointly with her or his spouse." Section 1 (3) permits of certain adoptions outside the ordinary conception of the status of adoption but it seems to be clear that is as far as a court may go. You yourself call the proposed adoption by the natural parents of a legitimated child an artificial adoption for the advantage of giving the child a " birth certificate." Should the Act be used for such a purpose? The artificial purpose is to obtain an adopted birth certificate which it is hoped will cover up the pre-marital indiscretion of the parents.

My experience of adopted certificates in cases properly falling within s. 1 (3) leads me to the conclusion that the advantage of the " birth certificate " is very dubious. When the child sees the adopted certificate doubt must be created as to real parenthood and considerable explanation will have to be given. Adopters are often advised to bring up the child in the full knowledge of the truth so as to avoid the later risk of discovery. Mothers adopting their own illegitimate children or adopting jointly with the stepfather, who may be the natural father when the child has been born before marriage, and not disclosing the true facts to the child may find that the child when it does see the adopted certificate has doubts about the truth of the explanation then given—and so the embarrassment then is greater than that which it was sought to avoid by the adoption. The Legitimacy Act, 1926, gives the legitimated child the status required which could not be bettered or altered by adoption.

I am surprised that it is thought necessary to go to such extremes as suggested in your answer that a legitimated child should be adopted so as to give it the advantage of an adopted certificate. You agree there will be no alteration in status which means that the child will still be a legitimated bastard, albeit adopted as well, and as such may be more acceptable than some metaphorical bastards with unexceptionable birth certificates. In Scotland where the law seems less willing to give the benefit of the doubt, as exemplified in the verdict of " Not Proven," the birth certificate quotes the date of marriage of the parents. Is it not time now to accept and provide only for the shortened birth certificate quoting name and date of birth for all purposes and then judge the person on individual merit? The major objection to the shortened certificate was in connexion with succession to real estate and titles but this objection can only apply in a few instances and these are decreasing by repeated application of death duties to estates.

Yours faithfully,
A. N. MURDOCH,
Clerk to the City Justices.

St. Mary's Hall,
Coventry.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

" INCORPOREAL INTERESTS "

The article at p. 252 was well up to A.L.P.'s usual standard but I feel that, due no doubt to lack of space, an important aspect of the matter has been omitted.

On the assumption that the present occupier of the haunted premises bought them from the previous occupier, it is clear that there was at the same time a sale of spirits. Since the vendor was a Minister of the Crown, it is almost unthinkable that he should sell spirits without a licence, yet it does not appear from the article that the premises were in fact so licensed, nor does the modest rating assessment suggest that they were.

If no such licence existed, the dire provisions of s. 161 of the Customs and Excise Act, 1952, come into play, subs. (1) exposing the vendor to a penalty of £100 for selling spirits on unlicensed premises: and a similar penalty may be exacted from the unfortunate purchaser for receiving spirits from a person not authorized to sell them—apparently, on the wording of the subsection, even though she did not know and had no means of knowing that she was receiving them.

Perhaps the one bright spot is that subs. (1) also provides that the spirits shall be liable to forfeiture. The purchaser may therefore be disposed to make a full confession of her crime, pleading ignorance in mitigation, and she may think £100 a cheap enough price to pay for the privilege of watching H.M. Commissioners of Customs and Excise attempting to secure possession of the offending spirits.

Yours faithfully,
R. C. HUNTRISS,
Clerk to the Justices.

38, High Street,
Banbury.

[A.L.P. writes:

Our learned correspondent is, we feel, making an unwarranted assumption in suggesting that there has been a " sale of spirits " at Priors' Court. There is no evidence that the interests in question have ever been severed from the realty and disposed of separately therefrom; they are clearly not transferable by manual delivery and if they were, *ex hypothesi*, choses in action, they would have had to be separately assigned. There appears to be some ground for the application of the maxim *quicquid plantatur solo cedit solo*, since attempts to remove them (by the process of exorcism or other form of execution) without damage to the freehold have been unsuccessful;

and we have never heard it suggested that the Licensing Acts or the Customs and Excise Act, 1952, apply to landlords' fixtures (if indeed they are to be considered such).

Without expressing any definite opinion, our inclination is to regard them as incumbrances touching and concerning the land, and (as such) binding in equity upon the property into whosesoever hands the same may come: alternatively they may constitute a kind of negative easement. If the authorities were ill-advised enough to prosecute, one defence would surely be duress. The freeholder has not brought them upon the property or consented to their remaining there; they are there *invito suo*.

We respectfully agree with our correspondent that forfeiture is probably the best solution, if H.M. Commissioners can effect seizure. The freeholder is not disposed to make any admission of any kind; but she would be prepared to give the Commissioners all necessary facilities to enter upon the premises for the purpose of such seizure and removal by any reasonable means, making good any damage to the premises thereby caused.

A.L.P.]

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MARRIAGE AND DIVORCE

Lt.-Col. M. Lipton (Brixton) asked the Attorney-General in the Commons whether he had now considered the Report of the Royal Commission on Marriage and Divorce, and what action he was taking.

The Attorney-General, Sir Reginald Manningham-Buller, replied that the recommendations made by the Royal Commission covered a very wide and varied field. Many of them would require legislation, for which he could hold out no prospect at present, more particularly as the commission was far from unanimous on some of the most important of its recommendations. Others, however, could be dealt with by administrative action, or by amendments to the rules of court, and the Lord Chancellor was at present considering those recommendations with a view to bringing the necessary amendments before the Supreme Court Rule Committee in due course.

In reply to another question from Mr. J. MacColl (Widnes), the Attorney-General said that the recommendation that no decree nisi should be granted until the court was satisfied about the arrangements for the children would involve legislation, but there was no reason why the rules of court should not require any party who was asking for custody to state what arrangements he or she proposed for the care and up-bringing of the children concerned.

Mrs. Eirene White (Flint, E.) said there were some points which could be dealt with fairly soon by legislation without entering into the wider controversial issues of the Report. For example, there was the position of those separated before 1937, on which there was a strong recommendation, and which, in the nature of the case, was an urgent matter for those concerned.

The Attorney-General replied that there were different views as to how controversial that kind of legislation would prove to be.

SUMMARY TRIAL OF MINOR OFFENCES

Mr. H. Hynd (Accrington) asked the Secretary of State for the Home Department what progress was being made in preparing measures to implement the recommendations of the Departmental Committee on the Summary Trial of Minor Offences.

The Secretary of State for the Home Department, Major Lloyd-George, replied that progress had been made with the drafting of the necessary legislation, but he could not hold out hope that it would be possible to find time for a Bill during the present session.

MURDERS

Major Lloyd-George told Sir F. Medlicott (Norfolk, C.) that the number of murders recorded as known to the police during the months of February, March and April, was 42 in 1956, 56 in 1955, 46 in 1954, 52 in 1953, 48 in 1952, and 31 in 1951.

PERSONALIA

APPOINTMENTS

Mr. Reginald W. J. Tridgell, deputy town clerk of Torquay, Devon, has been appointed clerk of Crawley, Sussex, urban district council.

Mr. Thomas M. Quinn has been appointed a probation officer at West Ham magistrates' court to fill the vacancy caused by the resignation due to health reasons of Mr. Colin Haigh. The appointment is subject to a satisfactory medical report being received and it is hoped that Mr. Quinn will commence duties at the court on July 2, next. Mr. Quinn is at present serving the City of Glasgow probation area as a probation officer. He has been there since September, 1953. Mr. Quinn holds a diploma in Public and Social Administration taken at Oxford.

Mr. Malcolm Thomas Walker will take up his duties as a full-time officer with the Leeds probation service on July 2, next. Mr. Walker has been trained under the Home Office training scheme. This is his first whole-time appointment.

Mr. J. B. Clemetson has been appointed an assistant official receiver for the bankruptcy district of the county courts of Cardiff and Barry; Blackwood, Tredegar and Abertillery; Newport (Mon.); Pontypridd, Ystradyfodwg and Porth; and the bankruptcy district of the county courts of Swansea; Aberdare; Aberystwyth; Bridgend; Carmarthen; Haverfordwest; Merthyr Tydfil; and Neath and Port Talbot. This appointment, announced by the Board of Trade, took effect from June 6, last.

RETIREMENT

Mr. Harry R. Winstanley, borough treasurer of Prestwich, Lancs., since 1939, retired on May 29, last, after 45 years' service with the council. He is succeeded by his deputy, Mr. H. Scholes, A.I.M.T.A.

OBITUARY

Mr. Wilfred Duke Coleridge, a former clerk of the Central Criminal Court, has died at the age of 66. Educated at Eton and Trinity College, Oxford, Mr. Coleridge was called to the bar by the Middle Temple in 1913. After service in the First World War, he became clerk of arraigns at the Central Criminal Court in 1929. In 1941 he became deputy clerk. Mr. Coleridge succeeded Sir Wilfred Nops as chief clerk in 1949 and in the same year he was appointed clerk of the peace for the city of London and the borough of Southwark. He retired from these offices a year ago.

NOTICE

The next quarterly meeting of the Lawyers' Christian Fellowship will be held at The Law Society's Hall, Bell Yard, W.C.2, on Wednesday, June 20, 1956, at 6.30 *p.m.* Tea will be available from 5.30 *p.m.* The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Lord Justice Hodson on the subject of " Family Life."

PIPING DOWN

It is recorded of Dr. Johnson that he was once taken to hear a celebrated violinist; as the Doctor appeared insufficiently impressed by the performance, his companion endeavoured to make him understand how difficult it was to play that particular composition. To which Johnson replied, in his usual forthright manner: "Difficult do you call it, Sir? I wish it were impossible!"

That sentiment must have been echoed many times since Johnson's day, and in varying circumstances. The man who has no music in his soul is perhaps, paradoxically, better off in these days of mechanical reproduction, since whatever the broadcast service provides can be instantaneously cut off by the flick of a switch. Equally to be envied is he who is receptive to music of all kinds, who will listen as attentively to, and applaud as enthusiastically, the wildest innovations of Bartók and Schönberg as the conventional *répertoire* of Beethoven and Brahms. Most pitiable is the case of the music-lover of eclectic taste, who worships the masters of the Golden Age—J. S. Bach, Handel, Haydn and Mozart—but has no time for anything composed later than 1800. Such a listener will sooner or later feel it a social duty to go to a concert or two of modern music, perhaps out of curiosity, to hear what is being written today, perhaps because of an uneasy feeling that he may be missing something good. If he makes such a venture he will, of course, feel it incumbent upon him to suffer excruciating torment from the gymnastics of a soloist upon the twelve-tone scale rather than commit the solecism of leaving his place and walking out of the hall before the end of the programme. But he will almost inevitably acquiesce in (though he may be too polite to utter) the Johnsonian aphorism quoted above.

Some people are allergic only to certain instruments; perhaps the Great Lexicographer was one of these, for of music generally he used to say that it was the only sensual pleasure without vice. Having regard to the notorious bee in his bonnet on the subject of Scotland and its inhabitants, it would have been interesting to know what he thought about the Scottish musical tradition and (above all) its national instrument. For, although the origin of the bagpipe must be sought in remote antiquity—certainly by the time of the Early Roman Empire and (according to some authorities) as far back as the Middle Kingdom of Ancient Egypt—there is no doubt that it has, in the modern world, come to have a special association with Caledonia stern and wild. And if there is one characteristic that distinguishes the Gael, it is his love of the bagpipes, with their melancholy "chaunt" and droning ground-bass—a combination of sounds which for the Sassenach have no appeal whatsoever.

Some will regard this last as a considerable understatement. W. S. Gilbert, in his ballad on the exploits of the bagpiper Macpherson Clonglocketty Angus M'Clan, has forcibly expressed the feelings of the ordinary Englishman on the subject:

> "No other could wake such detestable groans
> With reed and with chaunter, with bag and with drones.
> All day and all night he delighted the chiels
> With sniggering pibrochs and jiggety reels."

It is the unintermittent drone of the ground-bass, and the unfamiliar pentatonic scale of the chaunt, that render bagpipe-music so difficult of understanding for those who are not born and bred in the Highlands. Sassenachs the world over still complain in Gilbert's words

> "If you really must play on that cursed affair,
> My goodness! Play something resembling an air!"

A controversy that threatened to split the Commonwealth has been recently brought from Canada for the arbitration of an acknowledged *maestro* in Scotland. The city council of Port Arthur, Ontario, had decided to open the baseball-season with the playing of *God Save the Queen*, and had engaged a pipe-band for the purpose. Public opinion, unconsciously echoing Dr. Johnson, declared that the performance of this feat was not merely difficult, but impossible. After an angry delegation of citizens had waited on the council, it was decided to substitute a brass band. This was naturally displeasing to the purists of Scots descent, and the controversy spread to the neighbouring town, which bears the patronymic of Fort William. There a Scottish expert declared that *one* piper could play the melody in a "slightly camouflaged" form, and the average listener would not know the difference; but it would be difficult, he thought, if not impossible, for an entire pipe-band to "camouflage" in unison. This pronouncement seemed to degrade the listening public to the level described in the lyric:

> "There was a young girl of East Sheen
> Whose musical ear was not keen:
> She said 'It is odd,
> But I cannot tell *God*
> *Save the Weasel* from *Pop Goes the Queen*!'"

The contending parties therefore appealed to Pipe-Major William Ross, of the Army School of Piping, Edinburgh Castle. His judgment, which concludes the dispute, is that the National Anthem can be played on the pipes—"but not properly." It is not possible to strike the proper keys on the bagpipes, and if it were attempted the tune would be "mutilated."

The tragic irony of the whole thing is that music-historians are now inclined to think that *God Save the King* (as the original version was worded) was written, not by Henry Carey and John Bull (as used to be supposed), but by one James Oswald, who came to London, in 1742, from his native country—Scotland.

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, June 5

OCCASIONAL LICENCES AND YOUNG PERSONS BILL—read 3a.

Thursday, June 7

NATIONAL INSURANCE BILL—read 2a.
SLUM CLEARANCE (COMPENSATION) BILL—read 2a.
ADVOCATES' WIDOWS' FUND ORDER CONFIRMATION BILL—read 3a.

HOUSE OF COMMONS

Monday, June 4

COPYRIGHT BILL—read 2a.

NOTICE

The next court of quarter sessions for the county of Cheshire will be held on Wednesday, June 27, 1956, at The Castle, Chester. The adjourned quarter sessions will be held on Monday, July 2, 1956, at the Sessions House, Knutsford.

BOOKS AND PAPERS RECEIVED

Interviewing for the Selection of Staff. By E. Anstey and E. O. Mercer. London: George Allen & Unwin, Ltd. Price 10*s.* 6*d.* net.

Robinson's County Court Costs. By D. Freeman Coutts. London: Solicitors' Law Stationery Society, Ltd. Price 8*s.* net.

Journal of African Administration. April, 1956. London: Her Majesty's Stationery Office. Price: quarterly 2*s.* 6*d.* net.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Burial—*Corpse found during building operations—Liability of local authority.*

A nonconformist chapel in this borough was recently sold and the purchasers have demolished the building and have begun to erect a new building, having built up to date only the four outside walls up to a height of about 5 *ft.* In the course of recent excavations a coffin has become visible and in it is a body. The council have been asked to remove the body and re-inter it at their own expense. It is not known whether any further coffins will be unearthed during the excavations. It is probable that the coffin was placed in the ground before the chapel was built.

I have considered s. 162 of the Public Health Act, 1936, which gives a justice of the peace power to order a dead body to be removed to a mortuary or buried forthwith. The medical officer of health considers however that the body does not endanger the health of any person and in addition it appears that in fact no building exists at present so that for these two reasons this section appears not to be relevant.

I have also considered s. 50 of the National Assistance Act, 1948, which lays upon the council the duty to cause to be buried or cremated the body of any person who has died or been found dead in their area, in certain cases. At first sight it appears that this section is applicable because certainly a body of a person has been found dead in the borough. It appears to me, however, that unless the section is construed so as to exclude the bodies of persons who have been buried in the ordinary way the duty of a local authority under this section can become extremely wide, so as to include (for example) all the bodies in a private cemetery if, say, the coffins were removed from the graves and the tops of the coffins taken away. I have taken the view therefore that this section also is not applicable to the present circumstances.

Section 25 of the Burial Act, 1857, provides that it shall not be lawful to remove any body or the remains of any body which may have been interred in any place of burial without licence under the hand of a Secretary of State. It appears from the heading to the section that this provision only applies to bodies in burial grounds, but the wording of the section is much wider than this.

Will you please advise whether, in your opinion:

1. (*a*) the borough council or any other person is under any duty to take any action in regard to the body;

(*b*) if so, what action are they required to take, and what authority is there for stating that such a duty exists;

(*c*) who should bear the cost of taking any necessary action;

(*d*) if the borough council have no duty to take action, have they in fact any power to remove and re-inter the body at their own expense.

2. A licence is required in regard to s. 25 of the Burial Act, 1857, or any other statutory provision for the removal of the body.

3. Generally on the matter.

EWSEL.

Answer.

1. (*a*), (*b*), (*c*) We agree that s. 162 of the Public Health Act, 1936, does not apply. Section 50 of the National Assistance Act, 1948, is more difficult. In terms it is applicable, but looking to the well-known history of that enactment we have come to the conclusion, not without hesitation, that it does not apply. The duty rests in our opinion on the owners of the property where the corpse lies in accordance with the common law: *R.* v. *Stewart* (1840) 12 Ad. & E. 773.

(*d*) Strictly, we think not, but *see* 3 below.

2. The Act of 1857 is badly drafted: the phrase "such place of burial" crops up (for example) in s. 10, as if it meant something different from the cemeteries already mentioned and from burial grounds. In s. 25 we doubt, despite the marginal heading, whether the phrase can be limited to burial grounds provided under the Act. The judgment in *Re Talbot* (1901) P. 1 regards the protection given by the section as applying to all disinterments from unconsecrated ground, and we should so regard it. We believe the Home Secretary has acted on this view.

3. The council have facilities not available to private persons, and if they agreed to deal with the body, as an act of grace in order to avert public argument, we do not see who would object. They could disclaim liability and could presumably require the owner to indemnify them against burial expenses, and fees due to the Secretary of State, and could stipulate that their action did not create a precedent.

2.—Justices—*Expenses—Visit to prison.*

Under s. 8 of the Justices of the Peace Act, 1949, a justice of the peace shall be entitled to receive payments in respect of travelling allowance, or lodging allowance, where he incurs expense in connexion with the performance of his duties as a justice of the peace. In subs. (2) of the same section it is made clear that a justice following a course of instruction under an approved scheme shall be deemed to be performing a duty as a justice.

Justices of the peace have, I believe, been advised by the Lord Chancellor to make themselves acquainted with prisons, borstal institutions, and other training establishments, and arrangements have been made in at least one scheme for the training of justices for organized visits to such prisons and institutions. The expenses incurred by justices taking part in the organized visits can, without doubt, be properly re-imbursed to them.

Section 19 of the Prison Act, 1952, authorizes a justice of the peace to visit any prison within the area of his jurisdiction at any time and to visit any prison in which a prisoner is confined in respect of an offence committed within the area of his jurisdiction. The right given under s. 19, might, therefore, extend to journeys involving very long distances, if a prisoner from the area of the justice's jurisdiction had been transferred to a prison remote from his jurisdiction.

I should welcome your opinion as to whether a justice exercising his *right*, under s. 19, can claim to be performing a *duty* as a justice of the peace and, consequently, claim travelling and lodging allowances under s. 8 of the Justices of the Peace Act, 1949. SEXIS.

Answer.

If the justice visits a prison in persuance of a course of instruction arranged by the magistrates' courts' committee, he is entitled to travelling expenses, but not, we think, if he arranges the visit personally for his own instruction, *see* a Note at 119 J.P.N. 835. With regard to a visit in accordance with s. 19 of the Prison Act, 1952, the test seems to be whether the justice goes for the purpose of performing a duty as justice, in which case he is entitled to expenses, but otherwise we think not. Section 19 does not specifically impose any duty on justices to make visits, but there are occasions when a justice may feel it his duty to visit a prison as the result of a complaint.

3.—Licensing—*Off-licence—Procedure where application made for sale of beer in premises already licensed for sale of spirits and wine.*

We are acting for a firm of grocers who hold through one of their directors a wines and spirits off-licence in respect of the premises where the grocery business is conducted. The firm now want to, as they put it, "add a beer off-licence." It has been suggested to us that the correct procedure is to apply for an entirely new wines, spirits and beer off-licence and at the same time offer to surrender the existing wines and spirits off-licence if the application for the wines, spirits and beer off-licence is granted. We have prepared our notices on the basis of an application merely for a beer off-licence on the assumption that this licence if granted could be held with the existing wines and spirits off-licence.

Would you please let us know what you consider to be the correct procedure and if it is necessary to apply for a wines, spirits and beer off-licence to achieve the object of our clients and to offer to surrender the existing wines and spirits off-licence would you please let us know what form of words should be used in the notices for application regarding the offer to surrender the existing wines, spirits off-licence. OMBIL.

Answer.

In our opinion, the proper application is for an off-licence for the sale of beer. This licence, when granted and confirmed, will be concurrent with the off-licence for the sale of spirits and wine as renewed.

Neither statute law nor case law suggests the desirability of seeking a new grant to cover all intoxicating liquor coupled with the surrender of the current off-licence.

The notices, as already prepared by our correspondent, are, in our opinion, correct.

4.—Magistrates—*Practice and procedure—Depositions—Different charges against same defendant—One set of depositions?*

I shall value your advice on the following point:

At my court, A was charged with—

1. Burglary in the dwelling-house of B
2. Larceny from an outbuilding of B

} on the same night.

3. Breaking and entering the dwelling-house of C: all in the township of X.

The prosecuting solicitor asked for separate depositions in each case, to which I as clerk agreed, and the accused was committed for trial.

I am now informed that this was unnecessary, and also caused unnecessary expense: that all three offences should have been included in one set of depositions, and furthermore where one accused is charged with several offences, wherever and whenever they occurred, one set of depositions is sufficient. My informant said this was the case even if the county was different. I shall be obliged if you will confirm this, and when doing so, inform me if separate depositions can ever be necessary when concerned with the same defendant.

J. SILEX.

Answer.

We can find no authority on this point but in our view there is no objection to taking one set of depositions to deal with a number of different charges of a similar nature, as in the case referred to in the question.

We think it better to have separate sets of depositions if the charges are of an entirely different nature, *e.g.*, housebreaking and bigamy.

5.—Public Health Act, 1936, s. 20—*Sewer or drain—Vesting of sewers.*

In about 1900 certain drains were laid for the purpose of draining a farm house, farm buildings, farm cottages, and a large country house. The line of pipes (to use a neutral description) lead across a brook to a large cesspool, from which the effluent overflows over a field. All the properties were in the same ownership until about 1948, when the farm house, cottages, and buildings were sold away by the owner of the large house. The pipe across the brook has become defective and the owner of the large house seeks to show that, from the point at which the second building connects into the system, the line of pipes and cesspool is a public sewer vesting in the local authority. I have considered *Pakenham* v. *Ticehurst Rural District Council* (1903) 67 J.P. 448; *Meader* v. *West Cowes Local Board* (1892) 67 L.T. 445; and *Pilbrow* v. *St. Leonard Shoreditch* (1895) 59 J.P. 68; and it appears to me:

1. that the line of pipes leading to the cesspool is not a sewer nor is the cesspool itself; and

2. that the other premises may properly be considered to have been " premises within the same curtilage " within the definition of " drain " in s. 4 of the Public Health Act, 1785, and that, again, the pipes are drains and not sewers.

POAKSEY.

Answer.

1. We agree on the present authorities. The case seems distinguishable from that which we discussed at 119 J.P.N. 442. We dealt with yet other circumstances, also distinguishable, in another article at p. 57, *ante*.

2. Yes, in our opinion. The word curtilage may have different meanings in different Acts.

6.—Road Traffic Acts—*Accident—Realization of accident some hours later—Need to report to police.*

A whilst driving a motor car became involved in an accident with another motor car. He did not stop. A's defence is that at the time he had no knowledge that an accident had occurred. Later that day however, owing to minor damage to his car, he realised that he must have become involved in the accident. He did not report the accident to the police.

Proceedings are being instituted against A under s. 22 of the Road Traffic Act, 1930, under subs. (1) with failing to stop and give his name and address, and under subs. (2) with having failed to give his name and address, he failed to report the matter to the police. I shall be glad to receive your valued opinion of the following points:

(i) If A satisfies the court that he was unaware of the accident until several hours later, can he be convicted of the offence under subs. (1) ?

(ii) If the answer to (i) is no, would it follow that the summons under subs. (2) should be dismissed ?

(iii) If the answer to (ii) is no, if the knowledge of the accident came to him some days after, would your answer to (ii) be different ?

(iv) Yours view generally would be appreciated.

JARES.

Answer.

(i) We think not (*Harding* v. *Price* [1948] 1 All E.R. 283; 112 J.P. 189).

(ii) No, we think that if he knows within 24 hours of the accident that there has been an accident to which s. 22 applies he must report to the police under s. 22 (2).

We think that *Peek* v. *Towle* [1945] 2 All E.R. 611; 109 J.P. 160 emphasizes the absolute nature of the obligation to report under subs. (2) even though it has not been possible to comply with subs. (1).

(iii) If he does not know until more than 24 hours have passed we do not see how it is then possible for him to comply with s. 22 (2).

(iv) We have nothing to add.

7.—Small Dwellings Acquisition Act, 1899—*Joint owner seeking advance to buy whole property—Discharge of existing mortgage.*

My corporation recently received an application for a mortgage advance in the following circumstances. In 1950 X and Y became joint tenants of a house, holding it on a 75 year lease. The value of the house may be said to be £2,400. They jointly charged the property to a building society and the amount now outstanding is about £1,900. X is prepared to transfer his interest to Y if Y will pay him (X) £250 and discharge the outstanding mortgage. Y has applied for an advance of £2,200 to do this. Some doubt has arisen whether an advance may be made to cover the amount required, because part of the advance is to discharge a mortgage which is on Y's own interest. I should be glad if you would advise if an advance for the whole amount may be made and, if so, the grounds on which it may be done.

ARDIR.

Answer.

An advance can be made to a part owner to enable him to buy out the other person: *see* the definition of ownership in s. 10 of the Small Dwellings Acquisition Act, 1899. But where a person is already owner we do not consider that an advance can be made to enable him to pay off an encumbrance or charge. Since 1925, at all events, a mortgagor is already owner. We are aware that our opinion on the purely legal point is not universally accepted, but even if (technically) an advance could lawfully be made for paying off a mortgage we should consider it wrong to do so. The purpose of the Act is to produce more owner-occupiers. Lending to a man who is already owner does not promote this purpose; it merely diverts money which could have been used to help some person who was not already an owner. The existing owner should deal with his mortgage (if he wishes to get rid of it) in the ordinary way, by finding a transferee or by raising money on other security. *See* answers at 110 J.P.N. 612; 113 J.P.N. 607 (especially the last paragraph); 115 J.P.N. 334, 656, 722.